

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VAUGHN WAYNE MONROE,

Petitioner,

Civil No: 04-74885

Honorable Paul D. Borman

Magistrate Judge Paul J. Komives

v.

HAROLD WHITE,

Respondent.

**ORDER DENYING PETITIONER'S
MOTION TO ALTER OR AMEND JUDGMENT**

Petitioner Vaughn Wayne Monroe ("Petitioner") contends in his Motion to Alter or Amend Judgment, filed February 1, 2006, that the Court erred in its January 20, 2006 Order accepting the Magistrate Judge's Report and Recommendation ("R&R") over Petitioner's specific objections. Specifically, Petitioner states that he entered a conditional guilty plea that permitted him to appeal the trial court's pretrial rulings on his motion to quash, which was based on his speedy trial and uncounseled prior conviction claims.

Petitioner relied on the following excerpt in his objections to the R&R from pages 28 and 29 of the Preliminary Examination Transcript to show that his plea was conditional:

[TRIAL COUNSEL]: One a - one additional matter. If you've already covered this, I apologize, your Honor. Did the Court inform Mr. Monroe that his right to appeal the Court's rulings on the two issues are now limited because of this plea and - and he will now only be able to appeal if - if leave of the court is granted by the Court of Appeals?

[THE COURT]: I'm not even sure that that's correct, but certainly any appeal that you would have now, as I said - I already said to you, Mr. Monroe -

[THE DEFENDANT]: It's by leave, right?

[THE COURT]: Would be by leave only. Do you understand that?

[THE DEFENDANT]: Yes, I understand that.

Even assuming that counsel meant for “these issues” to refer to the claims raised in Petitioner’s motion to quash, the trial court made clear that any appeal of “these issues” could only be made if leave of the court is granted by the Court of Appeals, which Petitioner acknowledged.

Petitioner has provided no evidence that leave of the court was granted by the Court of Appeals on those issues. In fact, the Court of Appeals denied Petitioner’s appeal for lack of merit in the grounds presented. *See* Docket Entry 14 (Court of Appeals January 26, 2004 Order). Furthermore, as required by M.C.R. 6.301(C)(2) covering conditional pleas, Petitioner has not provided no evidence of this conditional plea, other than the above transcript which fails to support his claim.

Accordingly,

IT IS ORDERED that Petitioner’s Motion to Alter or Amend Judgment is DENIED.

s/Paul D. Borman

PAUL D. BORMAN

UNITED STATES DISTRICT JUDGE

Dated: April 4, 2006

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on April 4, 2006.

s/Jonie Parker

Case Manager